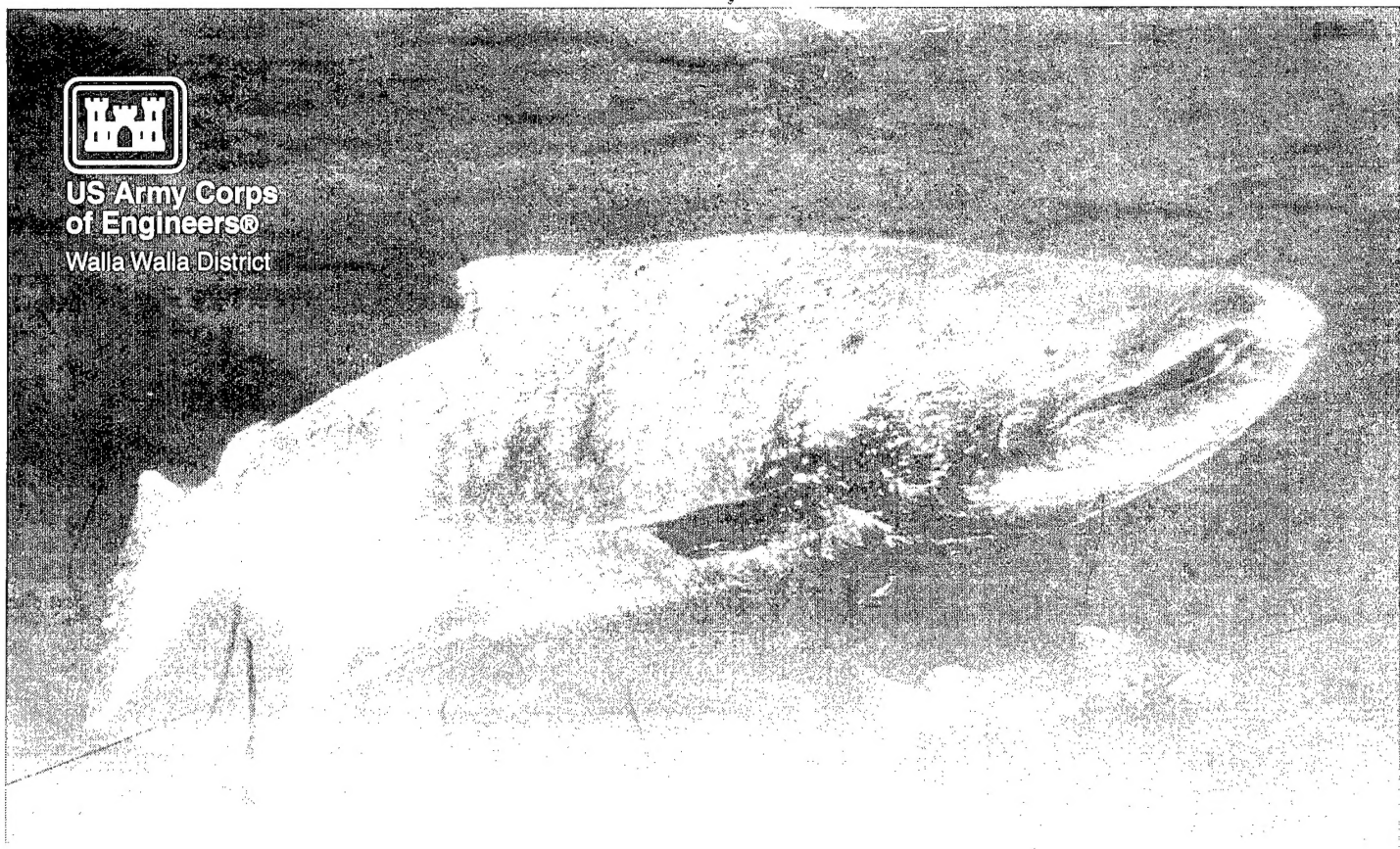




US Army Corps
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Walla Walla District



DRAFT

**Lower Snake River Juvenile
Salmon Migration Feasibility Report/
Environmental Impact Statement**

**APPENDIX Q
Tribal
Consultation/Coordination**

20010322 005

December 1999

AQM01-05-0835

REPORT DOCUMENTATION PAGE			Form Approved OMB No. 0704-0188	
<small>Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188), Washington, DC 20503.</small>				
1. AGENCY USE ONLY (Leave blank)		2. REPORT DATE December 17, 1999		3. REPORT TYPE AND DATES COVERED Draft 17 Dec 99 - 31 Apr 00
4. TITLE AND SUBTITLE Lower Snake River Juvenile Salmon Migration Feasibility Report and Environmental Impact Statement (Draft FR/EIS) Appendix Q Tribal Consultation Coordination				5. FUNDING NUMBERS
6. AUTHOR(S) US Army Corps of Engineers, Walla Walla District				
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) US Army Corps of Engineers, Walla Walla District				8. PERFORMING ORGANIZATION REPORT NUMBER
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) US Army Corps of Engineers, Walla Walla District				10. SPONSORING/MONITORING AGENCY REPORT NUMBER
11. SUPPLEMENTARY NOTES				
12a. DISTRIBUTION AVAILABILITY STATEMENT Public Comment period began 17 Dec 99 and ended 30 Apr 00. Approved for public release; distribution is unlimited				12b. DISTRIBUTION CODE
13. ABSTRACT (Maximum 200 words) The Corps of Engineers along with the Bonneville Power Administration, US Environmental Protection Agency, and US Bureau of Reclamation as cooperating agencies, analyzed four general alternatives intended to provide information on the technical, environmental, and economic effects of actions related to improving juvenile salmon passage. The four alternatives include Alternative 1 - Existing Conditions (the no-action alternative) and three different ways to further improve juvenile salmon passage. The action alternatives are: Alternative 2 - Maximum Transport of Juvenile Salmon, Alternative 3 - Major System Improvements, and Alternative 4 - Dam Breaching. Comparison of the alternatives by all of the factors assessed in the study has not offered a clear-cut recommendation at this time. It is the Corps of Engineer's intent to recommend a preferred plan of action in the Final FR/EIS.				
14. SUBJECT TERMS Lower Snake River Project Endangered Species Act Fish Passage				15. NUMBER OF PAGES
				16. PRICE CODE
17. SECURITY CLASSIFICATION OF REPORT UNCLASSIFIED	18. SECURITY CLASSIFICATION OF THIS PAGE UNCLASSIFIED	19. SECURITY CLASSIFICATION OF ABSTRACT UNCLASSIFIED	20. LIMITATION OF ABSTRACT UL	

FEASIBILITY STUDY DOCUMENTATION

Document Title

Summary to the Lower Snake River Juvenile Salmon Migration Feasibility
Report/Environmental Impact Statement

Lower Snake River Juvenile Salmon Migration Feasibility Report/Environmental Impact
Statement

Appendix A	Anadromous Fish
Appendix B	Resident Fish
Appendix C	Water Quality
Appendix D	Natural River Drawdown Engineering
Appendix E	Existing Systems and Major System Improvements Engineering
Appendix F	Hydrology/Hydraulics and Sedimentation
Appendix G	Hydroregulations
Appendix H	Fluvial Geomorphology
Appendix I	Economics
Appendix J	Plan Formulation
Appendix K	Real Estate
Appendix L	Lower Snake River Mitigation History and Status
Appendix M	Fish and Wildlife Coordination Act Report
Appendix N	Cultural Resources
Appendix O	Public Outreach Program
Appendix P	Air Quality
Appendix Q	Tribal Consultation/Coordination
Appendix R	Historical Perspectives
Appendix S	Snake River Maps
Appendix T	Biological Assessment
Appendix U	Clean Water Act, Section 404(b)(1) Evaluation

The documents listed above, as well as supporting technical reports and other study information, are available on our website at www.nwww.usace.army.mil. Copies of these documents are also available for public review at various city, county, and regional libraries.

FOREWORD

This appendix is one part of the overall effort of the U.S. Army Corps of Engineers (Corps) to prepare the Lower Snake River Juvenile Salmon Migration Feasibility Report/Environmental Impact Statement (FR/EIS).

Please note that this document is a DRAFT appendix and is subject to change and/or revision based on information received through comments, hearings, workshops, etc. After the comment period ends and hearings conclude a Final FR/EIS with Appendices is planned.

The Corps has reached out to regional stakeholders (Federal agencies, tribes, states, local governmental entities, organizations, and individuals) during the development of the FR/EIS and appendices. This effort resulted in many of these regional stakeholders providing input, comments, and even drafting work products or portions of these documents. This regional input provided the Corps with an insight and perspective not found in previous processes. A great deal of this information was subsequently included in the Draft FR/EIS and Appendices, therefore, not all the opinions and/or findings herein may reflect the official policy or position of the Corps.

STUDY OVERVIEW

Purpose and Need

Between 1991 and 1997, due to declines in abundance, the National Marine Fisheries Service (NMFS) made the following listings of Snake River salmon or steelhead under the Endangered Species Act (ESA) as amended:

- sockeye salmon (listed as endangered in 1991)
- spring/summer chinook salmon (listed as threatened in 1992)
- fall chinook salmon (listed as threatened in 1992)
- steelhead (listed as threatened in 1997)

In 1995, NMFS issued a Biological Opinion on operations of the Federal Columbia River Power System. The Biological Opinion established measures to halt and reverse the declines of these listed species. This created the need to evaluate the feasibility, design, and engineering work for these measures.

The U.S. Army Corps of Engineers (Corps) implemented a study after NMFS's Biological Opinion in 1995 of alternatives associated with lower Snake River dams and reservoirs. This study was named the Lower Snake River Juvenile Salmon Migration Feasibility Study (Feasibility Study). The specific purpose and need of the Feasibility Study is to evaluate and screen structural alternatives that may increase survival of juvenile anadromous fish through the Lower Snake River Project (which includes the four lowermost dams operated by the Corps on the Snake River—Ice Harbor, Lower Monumental, Little Goose, and Lower Granite dams) and assist in their recovery.

Development of Alternatives

The Corps completed an interim report on the Feasibility Study in December 1996. The report evaluated the feasibility of drawdown to natural river levels, spillway crest, and other improvements to existing fish passage facilities. Based in part on a screening of actions conducted in the interim report, the study now focuses on four courses of action:

- Existing conditions (currently planned fish programs)
- System improvements with maximum collection and transport of juveniles (without major system improvements such as surface bypass collectors)
- System improvements with maximum collection and transport of juveniles (with major system improvements such as surface bypass collectors)
- Dam breaching or permanent drawdown to natural river levels for all reservoirs

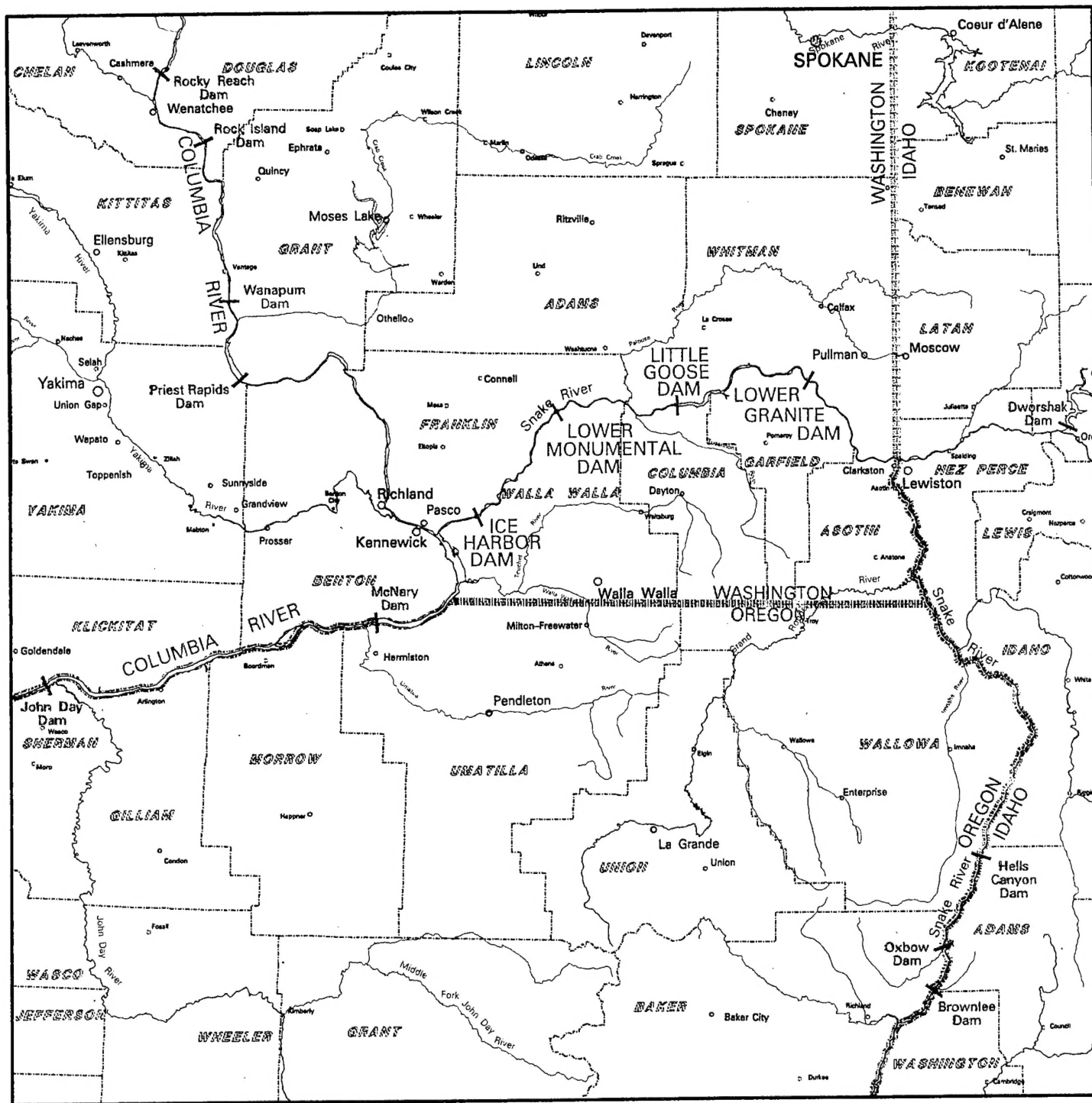
The results of these evaluations are presented in the combined Feasibility Report (FR) and Environmental Impact Statement (EIS). The FR/EIS provides the support for recommendations that will be made regarding decisions on future actions on the Lower Snake River Project for passage of juvenile salmonids. This appendix is a part of the FR/EIS.

The **Major System Improvements Alternative** would provide additional improvements to what is considered under the Existing Conditions Alternative. These improvements would be focused on using surface bypass collection (SBC) facilities in conjunction with extended submersible bar screens (ESBS) and a behavioral guidance system (BGS). The intent of these facilities is to provide more effective diversion of juvenile fish away from the turbines. Under this alternative the number of fish collected and delivered to upgraded transportation facilities would be maximized at Lower Granite, the most upstream dam, where up to 90 percent of the fish would be collected and transported.

The **Dam Breaching Alternative** has been referred to as the "Drawdown Alternative" in many of the study groups since late 1996 and the resulting FR/EIS reports. These two terms essentially refer to the same set of actions. Because the term drawdown can refer to many types of drawdown, the term dam breaching was created to describe the action behind the alternative. The Dam Breaching Alternative would involve significant structural modifications at the four lower Snake River dams allowing the reservoirs to be drained and resulting in a free-flowing river that would remain unimpounded. Dam breaching would involve removing the earthen embankment sections of the four dams and then developing a channel around the powerhouses, spillways, and navigation locks. With dam breaching, the navigation locks would no longer be operational, and navigation for large commercial vessels would be eliminated. Some recreation facilities would close while others would be modified and new facilities could be built in the future. The operation and maintenance of fish hatcheries and Habitat Management Units (HMUs) would also change although the extent of change would probably be small and is not known at this time. Project development, design, and construction span a period of nine years. The first three to four years concentrate on the engineering and design processes. The embankments of the four dams are breached during two construction seasons at year 4-5 in the process. Construction work dealing with mitigation and restoration of various facilities adjacent to the reservoirs follows dam breaching for three to four years.

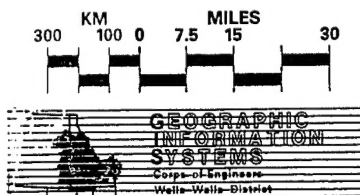
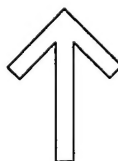
Authority

The four Corps dams of the lower Snake River were constructed and are operated and maintained under laws that may be grouped into three categories: 1) laws initially authorizing construction of the project, 2) laws specific to the project passed subsequent to construction, and 3) laws that generally apply to all Corps reservoirs.



BOUNDARIES

State ☐
County ☐



125,000 ACRES



1 : 1,900,800

DRAFT

Lower Snake River
Juvenile Salmon Migration Feasibility Study

**REGIONAL
BASE MAP**

ABSTRACT

Appendix Q, Tribal Consultation and Coordination, was prepared by U.S. Army Corps of Engineers Walla Walla District staff. This appendix provides supplemental information for the Lower Snake River Juvenile Salmon Migration Feasibility Study, which documents how affected American Indian tribes and communities were consulted and tribal issues considered. This appendix discusses the U.S. Army Corps of Engineers' responsibilities to 14 tribes affected by the proposed study and what steps were taken toward the tribes' involvement. Concerns raised by tribes are being considered in this Feasibility Report and Environmental Impact Statement process.



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**Lower Snake River Juvenile Salmon
Migration Feasibility Report/
Environmental Impact Statement**

Appendix Q

Tribal Consultation and Coordination

**Produced by
U.S. Army Corps of Engineers
Walla Walla District**

Completed November 1999
Revised and released for review
with Draft FR/EIS
December 1999

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Q6-1

ACRONYMS AND ABBREVIATIONS

BIA	Bureau of Indian Affairs
BOT	Board of Trustees
Corps	U.S. Army Corps of Engineers
CTCIR	Confederated Tribes of the Colville Indian Reservation
CTUIR	Confederated Tribes of the Umatilla Reservation
DEIS	Draft Environmental Impact Statement
DOD	Department of Defense
ESA	Endangered Species Act
FCRPS	Federal Columbia River Power System
Feasibility Study	Lower Snake River Juvenile Salmon Migration Feasibility Study
FEIS	Final Environmental Impact Statement
FR/EIS	Feasibility Report/Environmental Impact Statement
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NPTEC	Nez Perce Executive Council

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Executive Summary

The United States has long recognized the dependent sovereign status of Indian tribes. Principles outlined in the United States Constitution and treaties, as well as those established by Federal laws, regulations and executive orders, continue to guide the nation's policy toward Indian nations.

The U.S. Army Corps of Engineers (Corps) conducts its government-to-government relationships with Federally recognized Indian tribes as a part of its obligations in addition to states, counties, and local governments. The relationship the Federal government maintains with tribes is unique and necessarily involves consultation with tribal governments. The Corps is responsible for assessing the impacts of agency activities, considering tribal interests, and assuring that tribal interests are considered in conjunction with Federal activities and undertakings.

The Corps recognizes that tribal governments are sovereigns located within and dependent upon the United States. Yet tribes have rights to set their own priorities, develop and manage tribal resources, and to be consulted in Federal decisions and activities having the potential to affect tribal rights. The Corps has a responsibility to help fulfill the United States government's responsibilities toward tribes when considering actions that may affect tribal rights, resources, and assets.

Several tribal chairpersons and tribal representatives have met with Corps commanders and Walla Walla District representatives regarding the Lower Snake River Juvenile Salmon Migration Feasibility Report/Environmental Impact Statement (FR/EIS). The Corps has also reached out to other potentially affected tribes. This effort has involved tribal programs and staff to help ensure information is exchanged and a range of viewpoints held by tribes considered. Issues raised in these meetings have indicated concerns about agency actions and their effects on culturally significant species such as salmonids and pacific lamprey fish, the effectiveness of proposed alternatives for fish passage through the hydropower facilities, effects to other natural resources and cultural resource sites, and how these influences would impact Indian communities.

Appendix N, Cultural Resources, and Appendix Q, Tribal Consultation and Coordination, to this FR/EIS describe the Corps' work toward identifying, considering, and protecting tribal rights and integrating tribal interests and concerns into the planning process. The Corps is committed to carrying out Federal activities in a manner that is consistent with the United States' legal obligations toward tribes.

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1. Introduction

The Federal government has a unique relationship with American Indian peoples and Federally recognized tribal governments. Principles outlined in the U.S. Constitution and treaties, historic executive orders, and mandates established in Federal laws, regulations, and modern executive orders, continue to guide our national policy towards American Indian nations.

Prior to the formation of Federally recognized tribes, the indigenous peoples of the lower Snake River region lived in villages comprised of several extended families. Groups of villages known as bands were bound together culturally, and collectively shared a homeland. The names of bands were typically taken from that of a major village. Through formal treaties and executive orders initiated by the United States government, groups of native bands were given Federal recognition as American Indian tribes. Although not always accurately represented in the treaties of the mid-1800's, the homelands of native peoples were thus ceded to the United States by tribes through treaties ratified by Congress. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. American Indian tribes are defined as "any Indian band, nation, village or community" the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. Thus the word tribe denotes Federal recognition of an American Indian government.

The modern tribes with cultural heritage pertaining to the lower Snake River are comprised of numerous communities associated with the Umatilla, Yakama, Nez Perce, and Colville Reservations, and families associated with the Wanapum community at Priest Rapids, Washington. Tribal members are both Americans and tribal citizens who may receive representation from Federal, state, county, and local governments. The unique manner in which tribal governments represent their members is perhaps the most sensitive to their immediate economic and cultural needs and values. The potential effects of the Lower Snake River Juvenile Salmon Migration Feasibility Study (Feasibility Study) and EIS alternatives on tribes have been characterized by both tribal representatives and in a study of five affected tribes (Meyer, 1999) in terms of effects to natural resources, habitats, and places that are culturally significant to tribes and their communities. The effects may directly relate to tribal economies and cultural practices and indirectly to people's health, social well being, quality of life, and values for the natural and cultural environment associated with the lower Snake River.

Affected tribes and American Indian communities maintain cultural values in both natural and cultural resources managed by the Corps in the lower Snake River. Numerous aquatic, plant, and wildlife species retain cultural significance to tribes, e.g., salmonids, pacific lamprey, sturgeon, whitefish, sculpin, deer, grouse, eagles, coyotes, bear, wolves, biscuitroot, Indian carrots, chokecherries, and tules. Values for the water, land, life forms, and places continue to be the source of Indian community concerns, as well as tribal governments' desires to protect their legal rights. Such values are lodged in both traditional life ways and modern socio-economic needs, which influence and impact tribes.

Changes to tribes' cultural identities and limitations imposed on traditional practices are ongoing. For example, the fisheries on and adjoining the lower Snake River system have been significantly altered over the past one and a half centuries in terms of access and habitat quality. Tribes that

desire to take treaty fish such as pacific lamprey (largely a ceremonial and subsistence activity) find their fishermen displaced from local fishing stations. Tribes such as the Yakama, Nez Perce, and Umatilla currently catch lamprey from tributaries of the lower Columbia River.

Federally recognized tribes have the right to set their own priorities and develop and manage tribal resources within the Federal government framework. Efforts have been made to assess the impact of Federal agency activities on tribes and to ensure that tribal interests and rights are considered before Federal actions are undertaken (see Meyer, 1999). Tribal interests and rights are viewed by tribes, traditional communities, and the Federal government within the spatial context of tribal ceded lands, traditional native homelands, and places traditionally used by native peoples. Places where tribes have rights to harvest resources may include fishing grounds and stations, root and berry fields, and hunting grounds. Of particular concern to tribes are the potential impacts from water resource management on anadromous fish runs and associated aquatic habitats, and tribal rights to fish for ceremonial, subsistence, and commercial needs.

In assessing effects of the Feasibility Study's proposed courses of action on tribes, the following factors may be considered: 1) economies of counties that encompass affected tribes and bands; 2) water quality and aquatic habitats; 3) accessibility to culturally and religiously significant places and resources; 4) viability and harvestability of culturally significant species; and 5) quality of habitat places that would impact treaty rights to hunt, fish, gather, and graze livestock. Short- and long-term effects to these factors are expected to differ.

2. American Indian Issues and Concerns

Some affected Indian tribes have significant interest in the development of the Feasibility Study and potential effects of its EIS. These tribes assert a general concern for the ecosystem of the area and cultural places, e.g., burial sites and harvest sites. Tribal concerns focus on the potential effects of the Feasibility Study on treaty rights—especially the right to fish for resources in the lower Snake River area. Most notably, the recovery of anadromous fish runs and interest for the potential to regain access to usual and accustomed harvest places was emphasized. Specific interest in the location and potential use of tribal allotments and the precise process of agency-tribe consultation, although important, was secondary. Tribes expressed their understanding of cultural resources as inclusive of natural resources as well as historical and archaeological components. Tribes, therefore, would like their interests and rights considered within the context of certain tribal cultural values and perspectives not universally represented in Federal decision-making.

The Federal government's trust responsibilities to tribes are meant to occur through on-going meaningful Federal agency consultation with tribal governments. The context for tribal interest must be examined both from the perspective of Federal legal responsibilities as well as those points raised by tribal government representatives. Protection of treaty rights and resources and cultural resources are of interest to both tribes and the Corps. The Feasibility Study is not expected to have significant impacts to treaty fish resources; however, it may contribute to regional recovery plans for anadromous fish populations in the long run.

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3. Government-to-Government Relations

National policy statements originating from the executive branch of the Federal government provide direction to Federal agencies on how to formulate relations with American Indian tribes and people and deal with common issues. The following are those most often referred to by Federal and tribal representatives:

1983—*Presidential Statement on American Indian Policy (19 Weekly Comp. Doc. 98-102)*. President Reagan's statement dated January 24, 1983 provided direction on treatment of American Indian tribes and their interests.

1984—*Department of Defense Directive No. 4710.1- June 21*.

1993—*Executive Order 12866 - Regulatory Planning and Review*. The Order enhanced planning and coordination concerning new and existing regulations. It made the regulatory process more accessible and open to the public. Agencies were directed to seek views of tribal officials before imposing regulatory requirements that might affect them.

1994—*Executive Order on Environmental Justice*.

1994—*White House Memorandum for the Heads of Executive Departments and Agencies*. This emphasized the importance of government-to-government relations with tribal governments and the need to consult with tribes prior to taking actions that may affect tribal interests, rights, or trust resources.

1995—*Government to Government Relations*. The U.S. Justice Department, Attorney General issued and signed a policy statement on government-to-government relations on June 1, 1995. It includes references to tribes' sovereignty status and the Federal Government's trust responsibility to tribal governments.

1998—*Executive Order 13084, May 14, 1998*

Policy Guidance Letter No 57, Indian Sovereignty and Government Relations with Indian Tribes. Implements Executive Order 13084.

1998—*DOD American Indian and Alaskan Native Policy, 20 October, 1998*

Government-to-Government Relations with Native American Tribal Governments, Memorandum of 22 April, 1994

1999—*Project Operations Native American Policy, 12 July 1999*

As noted in Executive Order 13084, the Federal government continues to work with tribes on issues concerning tribal self-government, trust resources, tribal treaty and other rights as one government to another government. The executive order directs agencies to consider affected Federally recognized tribes through the following policy principles:

1. The United States has a unique legal relationship with Indian Tribal governments as set forth in the Constitution, treaties, statutes, executive orders, and court decisions.
2. Tribes, as dependent nations, have inherent sovereign powers over their members and territories with rights to self-government. The United States works with tribes as one

government to another government addressing issues concerning tribal self-government, trust resources, and tribes' treaty and other rights;

3. Agencies will provide regular, meaningful, and collaborative opportunities to address the development of regulatory practices that may have significant or unique effects on tribal communities;
4. Cooperation in developing regulations on issues relating to tribal self-government, trust resources, or treaty and other rights should use, where appropriate, consensus building methods such as rule-making.

The historic development of Federal relations with tribes is based also on many important legal concepts and congressional actions that now form the basis of modern government-to-government relations.

4. Consultation and Coordination Requirements

The relationships between the Federal government, different tribes, and traditional Indian communities have evolved over our nation's history. Tribes retain certain inherent powers of self-government and thereby may seek to participate in Federal decisions or activities that have the potential to affect their rights and interests. Indian treaties, Federal statutes, executive orders, national policies, and court cases have collectively and over time caused changes in how these special Federal relationships are exercised. Currently, affected tribes and traditional Indian communities are involved in both local and regional Federal decisions/activities that have the potential to affect their rights and interests. Federal policies and statutes have directed Federal agencies to consult and co-ordinate with American Indian tribes and traditional communities about their actions. In facilitating this process, the Corps routinely seeks to provide "meaningful and timely opportunities" for tribes to comment on agency policies that may have significant or unique effects on tribal interests (DOD American Indian and Alaskan Native Policy, 20 October, 1998).

4.1 Laws and Statutes relating to Tribal Interests

There is an extensive list of Federal laws, executive orders, policy directives, and Federal regulations that place legal responsibilities on executive branch agencies. Collectively, these legally binding authorities, which continue to form the basis of how consultation is conducted, have had a profound impact on Federal-tribal relations. An example is the *National Environmental Policy Act of 1969 (NEPA)*, (83 Stat. 852; 42 U.S.C. 4321 et seq./P.L. 91-190), which established a framework of public and tribal involvement in land management planning and actions. NEPA also provides for consideration of historic, cultural, and natural aspects of our environment. The *National Historic Preservation Act of 1966*, (P.L. 89-665, as amended by P.L. 91-423, P.L. 94-422, P.L. 94-458, and P.L. 96-515) known as NHPA was amended in 1992. On July 1, 1999, new NHPA implementing regulations were adopted, which implement the Act and also clarify it. The NHPA explicitly directs Federal agencies to involve tribes along with other consulting parties in the process of identifying historic properties. Specifically, places of cultural and religious significance to tribes are to be considered by Federal agencies in policy and project planning. Cultural properties significant to traditional communities have become a type of historic property that Federal agencies should identify and manage.

"Consultation" is achieved through an effective communication process in which government officials engage in regular and meaningful discussions with representatives of Indian tribal governments. The Walla Walla District Corps of Engineers is increasingly engaging and involving tribes in collaborative processes designed to facilitate the exchange of information and to effectively address effects of Federal actions and policies on tribal interests and rights (Executive Order 13084).

4.2 Corps Policy Guidance and American Indian Tribes

In February of 1998, Lt. General Joe N. Ballard, Chief of Engineering, published a Memorandum for Commanders, Major Subordinate Commands and District Commands: Policy Guidance Letter

No. 57, Indian Sovereignty and Government-to-Government Relations with Indian tribes. It is reproduced here:

1. Our Nation has long recognized the sovereign status of Indian tribes. The United States Constitution specifically addresses Indian sovereignty by classing Indian treaties among the "supreme law of the land," and established Indian affairs as a unique focus of Federal concern. Principles outlined in the treaties, as well as those established by Federal laws, regulations, and Executive Orders, continue to guide our national policy towards Indian Nations.
2. On 29 April 1994, President Clinton reaffirmed the United States' "unique legal relationship with Native American tribal governments." In recognition of the special considerations due to tribal interests, the President directed Federal agencies to operate within a government-to-government relationship with Federally recognized Indian tribes; consult, to the greatest extent practicable and permitted by law, with Indian tribal governments; assess the impact of agency activities on tribal trust resources and assure that tribal interests are considered before the activities are undertaken; and remove procedural impediments to working directly with tribal governments on activities that effect trust property or governmental rights of the tribes....
3. I want to ensure that all Corps Commands adhere to principles of respect for Indian tribal governments and honor our Nation's trust responsibility. To this end I have enclosed US Army Corps of Engineers Tribal Policy Principles, for use as interim guidance until more detailed statements are developed. These Principles have been developed with the Office of the Assistant Secretary of the Army (Civil Works) and are consistent with the President's goals and objectives.

Tribal Sovereignty—The US Army Corps of Engineers recognizes that Tribal governments are sovereign entities, with rights to set their own priorities, develop and manage Tribal and trust resources, and be involved in Federal decisions or activities which have the potential to affect these rights.

Trust Responsibility—The US Army Corps of Engineers will work to meet trust obligations, protect trust resources, and obtain Tribal views of trust and treaty responsibilities or actions related to the Corps, in accordance with provisions of treaties, laws and Executive Orders as well as principles lodged in the Constitution of the United States.

Government-to-Government Relations—The US Army Corps of Engineers will ensure that Tribal Chairs/Leaders meet with Corps Commanders/Leaders and recognize that, as governments, tribes have the right to be treated with appropriate respect and dignity, in accordance with principles of self-determination.

Pre-Decisional and Honest Consultation—The US Army Corps of Engineers will reach out, through designated points of contact, to involve tribes in collaborative processes designed to ensure information exchange, consideration of disparate viewpoints before and during decision making, and utilize fair and impartial dispute resolution mechanisms.

Self Reliance, Capacity Building and Growth—The US Army Corps of Engineers will search for ways to involve tribes in programs, projects and other activities that build economic capacity and foster abilities to manage Tribal resources while preserving cultural identities.

Natural and Cultural Resources—The US Army Corps of Engineers will act to fulfill obligations to preserve and protect trust resources, comply with the Native American Graves Protection and Repatriation Act, and ensure reasonable access to sacred sites in accordance with published and easily accessible guidance.

4.3 Off-Reservation Rights

Of special significance to the Feasibility Study are those tribes with treaty provisions dealing with off-reservation rights to hunt, fish, gather roots and berries, and graze livestock:

1855—June 9 Treaty with Yakama (12 Stat. 951 et seq) The treaty applies to 14 bands and tribes of the Yakama Indian Nation. Treaty Article 3 in part states, “The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with the citizens of the territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”

1855—June 9 Treaty with Walla Walla, Cayuse, and Umatilla (12 Stat. 945 et seq). Treaty Article 1 states in part, “That the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians, and at all other usual and accustomed stations in common with citizens of the United States, and of erecting suitable buildings for curing the same; the privilege of hunting, gathering roots and berries and pasturing their stock on unclaimed lands in common with citizens, is also secured to them.”

1855—July 11 Treaty with Nez Perce (12 Stat. 957). Article 3 in part states, “The exclusive right of taking fish in all the streams where running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places in common with citizens of the territory; and of erecting temporary buildings for curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”

1863—March 3 Treaty with Nez Perce Tribe (12 Stat.) Treaty Article 8: “The United States also agree to reserve all springs or fountains not adjacent to, or directly connected with, the streams or rivers within the lands hereby relinquished, and to keep back from settlement or entry so much of the surrounding land as may be necessary to prevent the said springs or fountains being enclosed; and further, to preserve a perpetual right of way to and from the same, as watering places, for the use in common of both whites and Indians.”

1868—Treaty with the Nez Percés (15 Stat. 693). This treaty in part amended the Nez Percés treaty of 1863 and pertains to those lands set apart for the exclusive use and benefit of the Nez Percés Tribe, which were ceded to the U.S. Government thereby diminishing the size of their reservation. Treaty Article 1 reads in part, “...and it is further agreed that those residing outside of the boundaries of the reservation and who may continue to so reside shall be protected by the military authorities in their rights upon the allotments occupied by them, and also in the privilege of grazing their animals upon surrounding unoccupied lands.”

1868—Fort Bridger Treaty (Stat.). Treaty Article 4 reads in part, “The Indians herein named...shall have the right to hunt on the unoccupied lands of the United States so long as the

game may be found thereon, and as long as the peace subsists among the whites and the Indians on the borders of the hunting districts."

The language in each of these treaties identified certain pre-existing rights that were retained by the tribal governments through which tribal citizens could exercise rights, e.g., the right to fish at usual and accustomed places and hunt, gather roots and berries, and pasture livestock on open and unclaimed land. In turn, tribal lands, including those along the lower Snake River along with the rest of their homelands, were to be ceded to the United States Government with the exception of their Indian Reservations.

5. Affected Tribes and Bands

There are 14 American Indian tribes and bands whose interests and/or rights may be affected by the proposed Federal actions in the Lower Snake River Feasibility Study and its draft EIS. The Confederated Tribes of the Umatilla Reservation; Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation, Nez Perce Tribe either have treaty rights, ceded lands, or other direct interests in the Feasibility Study area that may be affected by FR/EIS alternatives. The Confederated Tribes of the Colville Indian Reservation, and the Wanapum band have interests and some rights within the lower Snake River area. The District also identified nine other tribes that may be affected by proposed Federal actions directly or indirectly:

- Burns Paiute Tribe of the Burns Paiute Indian Colony
- Coeur d'Alene Tribe
- Confederated Tribes of the Warm Springs Reservation of Oregon
- Kalispel Indian Community of the Kalispel Reservation
- Kootenai Tribe of Idaho
- Northwestern Band of the Shoshoni Nation
- Shoshone-Bannock Tribes of the Fort Hall Reservation
- Shoshone-Paiute Tribes of Duck Valley Reservation
- The Spokane Tribe of the Spokane Reservation

A Tribal Circumstances Report was contracted by the Corps, which focused on five study tribes, and developed specific information concerning the alternatives and their potential to affect the Native American rights and interests. The study tribes were selected from those affected tribes with ceded lands and treaty rights within the Lower Snake River: Confederated Tribes of the Umatilla Reservation; Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation, Nez Perce Tribe. The Confederated Tribes of the Warm Springs Reservation of Oregon and the Shoshone-Bannock Tribes of the Fort Hall Reservation tribes were also selected as they have similar rights and interests in an area outside the Feasibility Study, which could be affected by management decisions at the lower Snake River hydropower facilities. The Confederated Tribes of the Warm Springs Reservation was included to consider potential effects to a tribe with interests and rights outside of the Feasibility Study under EIS alternatives, e.g., effects to treaty fishing rights. The study of these five tribes was intended to provide a framework to assess potential effects to their rights and interests, and consider those effects in conjunction with the other 11 identified affected tribes.

The names of tribes and bands discussed in this section are taken from ratified treaties and signed executive order documents, which formed the basis for a tribe's formal Federal recognition. In a few instances, additional names preferred by a tribe to identify a band or tribal sub-division are also noted. Many of the names in this section are anglicized versions of native terms, historical creations, or an historic version of another band's name for the group—usually a neighboring band/tribe. There are other native names and member bands that a tribe may recognize.

5.1 Burns Paiute Tribe of the Burns Paiute Indian Colony

Members of the Walpapi Band of the Northern Paiute signed the Treaty with the "Snake" band in 1865. The tribe signed a treaty with the U.S. Government in December of 1868; Congress failed to ratify it. The Executive Order of March 1872 established the Malheur Indian Reservation and recognized the Burns Paiute Indians. In 1883, however, another executive order dissolved the reservation and the tribe lost Federal recognition. The 1.8-million-acre Malheur Indian Reservation was terminated and the land was made public domain. The 1887 Indian Allotment Act allowed for 160 acres to be claimed by each tribal head of household. The Burns Paiute Tribe is located in eastern Harney County, Oregon. Tribal headquarters are in Burns, Oregon. In 1972 the United States transferred title to 762 acres to the Burns Paiute and established the Burns Paiute Reservation through Public Law 92-488.

The current reservation consists of 771 acres, and another 11,786 acres of allotments are owned by tribal members. An additional 360 acres are held in trust and administered for the Tribe by the Bureau of Indian Affairs. The tribe is self-governing. A Tribal Council of seven elected members was established by the tribe in 1988.

The peoples represented by the tribe are of the Great Basin Cultural Region consisting of the northern division of the Paiute peoples. The original homeland of the Northern Paiute peoples included southeast Oregon, most of northwestern Nevada, and a portion of southwest Idaho. Northern Paiute associated with the Burns Indian Reservation include the remnants of the Wadaika band (Wada Eaters who historically were centered around Malheur and Harney lakes); the Hunipui (Juniper-Deer Eaters of the Crooked River area); the Walpapi (Elk Eaters of the upper John Day River area); the Tagu (Salmon Eaters of the Owyhee River area); the Kidu (Groundhog Eaters of the Fort Bidwell area); and the Koa'agai. Northern Paiute and English are spoken by the tribe. Major religious affiliations include traditional Indian religions and denominations of Christianity.

5.2 Coeur d'Alene Tribe

In 1867 an entity called the Coeur d'Alene Reservation was created for the Coeur d'Alene, Kalispel, Spokane, Sanpoil, and Colville "bands." The Coeur d'Alene never moved to that reservation. In 1873, a 592,000-acre reservation was created for the Coeur d'Alene Tribe by Executive Order. In following years, the reservation area was reduced, lands ceded, and portions removed from the reservation. Today's reservation consists of 345,000 acres in northern Idaho.

Tribal government is under a constitution originally approved September 2, 1949. The Tribal Council is the legislative body. Tribal headquarters are in Plummer, Idaho.

Peoples represented by the tribe are of the Plateau Cultural Region and are of the Coeur d'Alene, Spokane, and San Joe River Tribes and Bands. In 1842 a Catholic mission for the tribe was established near St. Maries by Father Pierre DeSmet. Today religious affiliations include traditional Indian religions and denominations of Christianity. Interior Salish and English are spoken by the tribal peoples.

5.3 Confederated Tribes of the Colville Indian Reservation (CTCIR)

The basis for formal Federal recognition of the tribe and their inherent sovereignty was established through the "Nez Perce" and "Yakama" Treaties of June 9, 1855. Executive Order of

April 9, 1872, which was superseded by Executive Orders of March 6, 1879, February 23, 1883, March 6, 1880, and May 1, 1886; Agreements of May 9, 1891, July 1, 1892, December 1, 1905, and March 22, 1906; and the Act of June 20, 1940 all helped refine the Colville Tribe's relationship with the United States government.

The Colville Reservation was established in April 9, 1872 in north-central Washington. Modifications to the reservation size, status, and location in later years resulted in the present 1.4 million-acre reservation in north-central Washington. The basis of the tribe's off-reservation rights and interests is derived from the Yakama and Nez Perce Treaties of 1855, Article 3 and a 1891 Agreement, Article 6. It is through the Yakama Treaty that members of the Palous band moved onto the Colville Reservation in the late 19th century. The Colville tribe asserts rights and interests in ceded lands of the Palous people along the lower Snake River.

The Colville Tribe did not adopt the Indian Reorganization Act of 1934, but did establish a constitutional form of government with a Business Council in 1938. The tribe's Business Council membership is chosen from four reservation districts comprised of two groups of seven council members who are elected to four-year terms in staggered biennial elections. The chair and vice-chair Business Council positions are filled through elections held by its Executive Committee, while all other positions are elected by the entire Business Council membership. The General Council meets biannually to provide direction to the Business Council. Since 1995, the Colville Tribes have operated under a tribal self-determination agreement with the Bureau of Indian Affairs that has integrated Bureau of Indian Affairs (BIA) staff positions with the tribe's. Colville Tribal Headquarters are located in Nespelem, Washington.

The CTCIR represent peoples of the Plateau Culture Area including the Methow, Sanpoil, Lakes, Colville (Sweelpoo), Kalispel, Spokane, Entait, Nespelem, Chelan, Columbia (Senkaiuse), Chief Joseph Band of the Nez Perce (Nimipu), Wenatchee (Wenatchapum), Southern Okanogan (Sinkaietk), Palous, and Lakes (Senijextee). Interior Salish, Sahaptin, and English are spoken by the tribal population. Religious affiliations include traditional Indian religions and denominations of Christianity.

5.4 Confederated Tribes of the Umatilla Indian Reservation (CTUIR)

The "Treaty with the Walla Walla, Cayuse, and Umatilla Tribes," subsequent Treaties, and the CTUIR Constitution form the basis for formal recognition of the tribes' inherent sovereignty. The tribal government's off-reservation treaty rights are recognized in Article 1 of the treaty. Congress ratified this treaty in 1859 and a reservation was established encompassing 254,699 acres in what has become northeastern Oregon. The size of the reservation was reduced through subsequent congressional acts and today consists of 89,350 acres of trust and allotted lands. The tribes rejected the Indian Reorganization Act in 1935 by tribal referendum. A Constitution and By-laws were, however, adopted in 1949. The tribal governing body consists of a General Council and a Board of Trustees (BOT). The Board of Trustees is a nine-member council that sets tribal policy and makes final tribal decisions. The BOT members are elected together in a single election for two-year terms. All BOT members, except the chairperson, participate in tribal commissions and committees and thereby oversee tribal business. Tribal headquarters are in Mission, Oregon.

The bands represented by the CTUIR were affiliated with the southern Plateau Culture Area. English, Sahaptin dialects, and the Nez Perce language are spoken by tribal citizens. Major religious affiliations include traditional Indian religions and Christian denominations.

5.5 Confederated Tribes of the Warm Springs Reservation of Oregon

In 1855, the sovereignty of the Confederated Tribes of the Warm Springs Reservation was recognized in the "Treaty with the Tribes of Middle Oregon." (The "Treaty with the Tribes of Middle Oregon of 1865" was later negated by the U.S. Government.) Today's reservation, in central Oregon, consists of 640,000 acres, 480,196 acres of which are tribal-owned.

The tribes adopted the Indian Reorganization act in 1935 and adopted a constitution and by-laws in 1938. The tribes have an elected Tribal Council and various tribal committees and boards. The tribes are self-governing. Tribal headquarters are in Warm Springs, Oregon.

Peoples represented on the Reservation are of Plateau and Great Basin Cultural Regions and are from the Wasco Bands—Dalles, Ki-gal-twal-la, and Dog River; Warm Springs — Taih or Upper Deshutes, Wyam (Lower Deshutes), Tenino, Dock-Spus (John Day River); and Northern Paiutes (Removed to Warm Springs Reservation in the 1880s) groups. Languages spoken by tribal members include English, Chinookan, Sahaptin, and Shoshonean (Northern Paiute). Major religious affiliations include traditional Indian religions, traditional belief systems, and Christian denominations.

5.6 Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation

In 1855, the "Yakama Treaty" established the Yakama Nation and a reservation in what is now south-central Washington. Pre-treaty lands included about a quarter of the modern State of Washington. Other binding treaty documents include the Agreement of January 13, 1885; Executive Order November 21, 1892; and Executive Order 11670. A number of land ownership changes have resulted in the current 1.2 million-acre reservation. As a point of interest, the spelling of Yakama was changed from Yak[i]ma back to the original spelling in the Treaty of 1855 by a vote of the Tribal Council on January 24, 1994. In 1999, the tribal government has also indicated a preference to be known as the Yakama Nation.

The Tribal Council comprised of 14 members is the governing body. The General Council elects Tribal Council members in elections held every two years wherein half of the Tribal Council is elected to 4-year terms. The tribe's democratic government is regulated by General Council and Tribal Council resolutions. The tribe rejected the Indian Reorganization Act in 1935. The tribe has a self-determination form of government and operates under traditional laws, ordinances, and resolutions as opposed to having a constitution. The Tribal Council oversees tribal business through eight standing committees and seven special committees. The General Council meets annually for an extended period of time to provide direction to the Tribal Council. The Tribal Headquarters are in Toppenish, Washington.

The 14 bands represented on the Reservation include the Klickitat, Klinquit, Li-ay-was, Kow-was-say-ee, Oche-chotes, Palous, Shyiks, Pisqueose, Se-ap-cat, Skinpah, Wishram, Wenatshpam, Yakama, and Kah-milt-pah. These are all peoples of the southern Plateau Cultural Area.

Religious affiliations include traditional Indian religions and belief systems, and denominations of Christianity. Languages spoken on the reservation include English, numerous dialects of Sahaptin, Chinookan, and Salish.

5.7 Kalispel Indian Community of the Kalispel Reservation

The tribe's inherent sovereignty was recognized through an agreement with about half of the Kalispel Tribe in an Executive Order dated April 21, 1887. In 1904, another Executive Order established a reservation for the tribe. However, the U.S. Government wanted to move the Kalispel to the Flathead Reservation. In the end, a second 4,630-acre reservation was established in northeastern Washington on March 23, 1914. Today the reservation is about 4,550 acres. A Tribal Constitution and Charter was originally adopted on March 24, 1938. In addition to the constitution, tribal council resolutions create tribal law. The tribal headquarters are in Usk, Washington.

Peoples from tribes and bands of the "People of the Pend Oreille" are represented on the reservation. These peoples are of the Plateau Cultural Region. Major religious affiliations include Christian denominations, primarily Catholic. English and Interior Salish dialects are spoken.

5.8 Kootenai Tribe of Idaho

The Treaty with the Flathead, Kootenai, and Upper Pend d'Oreilles of July 16, 1855 established the tribe's sovereignty. Some Kootenai living in the vicinity of the Canadian border did not move to the Flathead Reservation in Montana when it was established. A group of Kootenai families living near Bonner's Ferry were recognized by the U.S. Government in 1894. By 1972 a reservation existed of approximately 2,683 acres. Today's reservation is approximately 1,300 acres. The tribe adopted a constitution in 1947. A revision of the constitution has been proposed. In addition to the constitution, the tribe is regulated by a code of conduct. Tribal Headquarters are in Bonners Ferry, Idaho.

The Kootenai peoples were composed of two groups, Upper and Lower. Two of the three bands of Lower Kootenai now reside in Canada. Major religions followed by the tribe include denominations of Christianity and traditional belief systems. Languages spoken are English and Kitunahan dialects.

5.9 Nez Perce Tribe

The "Nez Perce Treaty" of June 11, 1855 and subsequent treaties, acts, agreements, and proclamations established the legal status of the Nez Perce Tribe. A reservation of 7.7 million acres was established in 1855. In 1863 the reservation was re-established with 780,000 acres. The present reservation is 750,000 acres between the Clearwater and Snake Rivers in Idaho. The tribe rejected the Indian Reorganization Act in 1935 by tribal referendum. A constitution and by-laws were originally adopted in 1927. The tribe is self-governing under a constitution, which was adopted in 1958 and revised in 1961. The Nez Perce Executive Council (NPTEC) is the tribe's primary governing authority and they meet formally twice a month. The tribe's governing body (composed of tribal membership) is the general council and they meet twice a year. The general council elects three of the nine NPTEC members every year in September. There is no provision

under the Nez Perce Council to hold special General Council meetings. Tribal headquarters are in Lapwai, Idaho.

People represented by the tribal government are of the tribe and bands of the Nez Perce People (Nee-Mee-Poo) and are associated with the southern Plateau Culture Area. Major religious affiliations include Christian denominations and traditional Indian religions and belief systems. English and Sahaptin Nez Perce language dialects are spoken. There is a Nez Perce newspaper published by the tribe.

5.10 Northwestern Band of the Shoshoni Nation

Legal status is based on the Treaty of Box Elder of June 30, 1863 and subsequent Acts and Agreements. By 1900 many of the Northwestern Band resided on the Fort Hall Reservation. Others reside in Utah and Idaho communities. In 1989 the tribe acquired 187 acres of land that constitutes the present reservation in north-central Utah. Other nearby land parcels are held in trust by the Bureau of Indian Affairs. A constitution was approved on August 24, 1987. They did not accept the Indian Reorganization Act of 1935. The tribe is self-governing with a General Council of all adult enrolled tribal members and an elected Tribal Council. Tribal headquarters are in Brigham, Utah.

The Northwestern Band of Shoshoni include the Weber Utes, Northwestern Shoshoni, and other Shoshoni people from the Lemhi area of southeastern Idaho. Traditional religions and denominations of Christianity are the major religious affiliations. Shoshone and English are spoken.

5.11 Shoshone-Bannock Tribes of the Fort Hall Reservation

The Treaty with the Eastern Shoshoni Tribe of 1863 and subsequent Treaties, Acts, and Agreements form the basis for the sovereignty of the tribes. The Treaty reservation was originally established at 1.8 million acres. The present reservation is comprised of 544,000 acres in southeast Idaho adjacent to Caribou National Forest. The Tribal governments for the Shoshone and Bannock peoples operate under a constitution and by-laws adopted in 1977, the Land Use Ordinance, the Big Game Code, the Law and Order Code, inherent sovereignty, customs, and traditions. The legislative body is the elected Fort Hall Business Council.

The Shoshone-Bannock Tribes compose one Federally recognized tribe that includes two distinct groups, the Northern or Snake River Shoshone, and the Bannocks. The four Northern Shoshone Band divisions include the Western Shoshone (Warraeekas) including the Boise and Bruneas; the Mountain Lemhi Shoshone including the Tukuerukas (Sheepeaters) and the Agaidikas (Salmon Eaters); the Northwestern Shoshone including the Bear Lakes, Cache Valley, Bannock Creek, and Weber Ute; and the Pohogue (Fort Hall) Shoshone. Major religious affiliations include Christian denominations, the Native American Church, and traditional beliefs. Languages spoken include English, Shoshone, Bannock, and other dialects.

5.12 Shoshone-Paiute Tribes of Duck Valley Reservation

The Executive Order of April 16, 1877 set aside the Duck Valley Reservation for several Western Shoshoni bands that traditionally lived along the Owyhee River of southeastern Oregon, southwestern Idaho, and the Humbolt River of northeastern Nevada. Later, Paiute from the lower Weiser country of Idaho and other Northern Paiute families joined the Shoshoni on the

reservation. The reservation was expanded in 1886 to a half million acres to include a Northern Paiute group (Paddy Cap's Band), who arrived in 1884 following their release from the Yakama Reservation. The current reservation is of 294,242 acres. The entire reservation is owned by the tribe, forming a contiguous block of property located partially in southern Idaho and partially in northern Nevada.

The tribe adopted a constitution in 1936 in conformance with the Howard-Wheeler Act of 1934. The tribe is one of the original 17 tribes that achieved a self-governing status having shed BIA's supervision. The tribe has General Council meetings of adult tribal members and a six-member elected Tribal Council. Tribal headquarters are in Owyhee, Nevada. Western Shoshone and Northern Paiute peoples are represented on the reservation. Traditional religious beliefs and Christian denominations form the tribe's primary religious affiliations.

5.13 The Spokane Tribe of the Spokane Reservation

The Executive Order of January 18, 1881 and subsequent Agreements and Acts form the basis for the tribe's sovereignty. The first reservation was established in 1881 in northeast Washington. Today the reservation is comprised of 137,002 acres of fee, allotted, and trust lands. The tribe approved a constitution in May of 1951, establishing a Business Council. Today a general election chooses a five-member General Council that then elects members to the Business Council. At least once a year adult tribal members meet to advise the General Council. The tribe is self governing. Tribal headquarters are in Wellpinit, Washington.

Peoples represented by the tribe are of the Northern Plateau and represent Upper Spokane (Snxwemi'ne: people of the steelhead trout place); Middle Spokane (Sqasi'lni: fishers, after a village name); Lower Spokane (Sineka'lt: rapids, after a village name); and Chewelah groups. Major religious affiliations are Christian denominations, primarily Catholic. English and Interior Salish are spoken by the tribe.

5.14 Wanapum Band

The Wanapum Band today is a traditional Indian community that lives along the middle Columbia River within their native homeland. The community is comprised of a longhouse and families that follow traditional social, subsistence, and religious customs while having adapted to modern societal, and economic demands. The Wanapum people believe that their Creator gave them the land as a sacred trust and would not take it away from them. The families who live at Priests Rapids maintain the responsibility to address concerns on their ancestral homeland. The Wanapum have never left their homeland because of the sacred trust, and their responsibilities as they have been handed down to them from their elders.

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6. Regional Coordination

6.1 Forum Process

The Lower Snake River Feasibility Study has participated in many of the ongoing regional processes, coordination with other Federal agencies, tribes, and interested regional parties in matters related to the salmon issues. The Feasibility Study has also consulted directly with affected tribes, bands, and other interest parties on a host of other concerns and issues that relate to proposed alternative pathways addressed in the Feasibility Study. This is an ongoing effort that will continue throughout the planning and implementation stages of the Feasibility Study and EIS. See Appendix O, Public Outreach Program, for further information on this subject.

The following are examples of these regional organizations and not intended to be an inclusive listing.

6.2 Regional Forum

The Regional Forum was created by the National Marine Fisheries Service (NMFS) in 1996 to coordinate the implementation of programs (primarily the 1995 Biological Opinion) for at-risk Snake River salmon stocks with other programs for fish and wildlife, primarily the Northwest Power Planning Council, throughout the Columbia Basin. The tribes participated in this forum along with other interested parties. However, the tribes subsequently withdrew from active participation and threw their support to the Framework process, now known as the Columbia Basin Forum.

The Regional Forum is one of many regional activities within which the Corps has coordinated the Feasibility Study. Its basic structure is shown below:

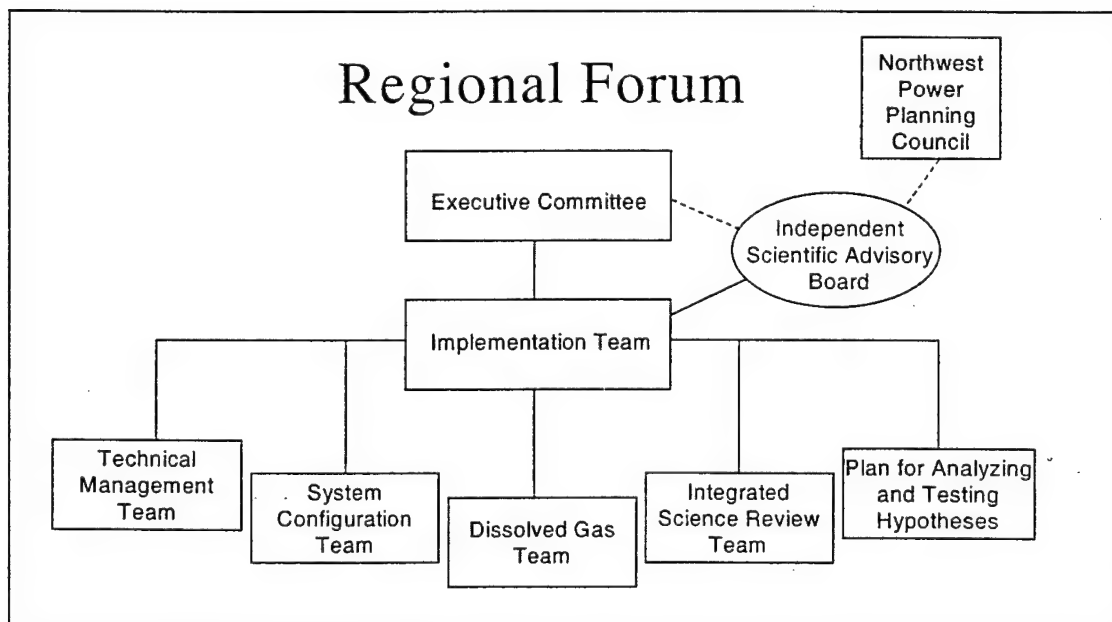


Figure 6-1. Regional Forum

6.3 Columbia Basin Forum

The Columbia Basin Forum is made up of representatives from the four Northwest states, the 13 Columbia Basin Tribes, and the Federal agencies involved in the Columbia River. Its purpose is to provide a high-level policy forum to coordinate the use of its members' respective authorities in addressing fish and wildlife management and related habitat issues in the Columbia Basin. This forum provides a place for governments and interested parties in the region to discuss alternative management approaches to the basin and test regional agreement on the various alternatives.

6.4 The Multi-Species Framework

The Northwest region's governments and stakeholders are working to develop and analyze alternative management plans for the Columbia River Basin. This regional effort is being coordinated through the Multi-Species Framework project and the Columbia Basin Forum. Participants include state governments, tribal governments and Federal agencies, with a management committee representing all three entities. The Framework aims to develop a science-based vision for Columbia Basin fish and wildlife management that recognizes the interrelated parts of the basin's ecosystem. The state governments, tribal governments and Federal agencies expect the Framework to guide the development of the Federal Columbia River Power System (FCRPS) alternatives, including the lower Snake River, by providing information on the likely biological, social, and economic outcomes of those alternatives.

6.5 Federal Caucus

There are nine Federal agencies involved in various aspects of management of the Columbia River. Several of these Federal agencies will be involved in the Endangered Species Act (ESA) consultations on operation and configuration of the FCRPS. These Federal agencies have a specific statutory responsibility under the ESA, including the preparation of a Biological Assessment and a Biological Opinion for listed species. To ensure coordination and effective representation in the Framework and Forum, and to prepare for this ESA consultation, the Federal agencies formed a Federal Caucus.

6.6 Tribal Caucus

The 13 Indian tribes in the Columbia Basin represent sovereign entities with management authorities for fish, water, and wildlife resources within their reservations, as well as various legal rights that extend off-reservation as expressed in treaties and executive orders.

To ensure coordination and effective representation in the Framework and Forum, the tribes have formed a Tribal Caucus. The Tribal Caucus serves to identify consensus between participating tribes where it exists. The Federal and Tribal Caucuses, will provide key mechanisms for communications between the Federal agencies and the tribes.

7. Feasibility Study Consultation and Coordination with Affected Tribes and Bands

Tribal consultation on the Lower Snake River Juvenile Salmon Migration Feasibility Study (Feasibility Study) was initiated in July 1997, when the Walla Walla District hosted a meeting with the regions' tribes to discuss tribal coordination and formal consultation for the Feasibility Study process. At the July meeting, the participants agreed to a consultation process that included periodic status letters from the Corps as well as providing the tribes the opportunity to review and comment on the various components of the study. Those agreements and the proposed consultation milestones throughout the remainder of the study were identified in a letter to the tribes dated April 7, 1998. The Corps also agreed to follow-up meetings as a part of the continuing consultation process.

A second tribal consultation meeting was hosted by the Corps of Engineers in Walla Walla on August 19, 1998. Information concerning the nature of the Feasibility Study and the status of its DEIS appendices/reports was shared with tribal representatives from the affected tribes of the Colville, Shoshone-Paiute and Umatilla Indian Reservations. The Corps clarified the intent of the meeting as an opportunity to consult with some affected tribes and that formal consultation would occur prior to the release of the Draft Environmental Impact Statement (DEIS). The issues raised at the meeting included the following: a) how and at what cost might existing hydropower facility equipment be removed/salvaged; b) obligations concerning property rights for livestock watering corridors; c) the need to consider EIS effects on Palous band's interests; d) dam breaching effects on river sediment levels and remedies; and e) the findings of how effective facility surface bypass equipment would be to divert fish away from dam turbines at Lower Granite Dam.

The Corps of Engineers hosted a third tribal consultation meeting in Richland, Washington on February 22, 1999. The meeting was arranged to share technical information and discuss policy issues related to the Feasibility Study. Representatives from the Umatilla and Nez Perce Reservations and the Wanapum community attended the meeting. These representatives advised the Corps to consult in the future with affected tribes concerning the Feasibility Study on an individual basis. Tribal concerns discussed at the meeting included the following: a) political influences on the decision-making process; b) limited value of the analysis concerning transporting anadromous fish in barges passed dam facilities; c) implications of treaty rights need to be fully examined in the DEIS; d) concern for adult fish passage problems through by-pass features at dams; e) how will tribes be permitted opportunities to review DEIS appendices; and f) drawdown alternative costs to modify Potlatch facility in Idaho in case compliance with water quality standards is necessary for the lower Snake River. The tribe also requested that the Feasibility Study examination of Executive Orders 13007 (Sacred Sites) and 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations).

The CTUIR requested a formal consultation meeting with the Corps in a letter dated February 22, 1999 to Colonel Eric Mogren. In response, a meeting took place in Mission, Oregon on May 12, 1999. The tribe presented seven points they expect the Corps to deal with in consultation with the CTUIR, including the protection of treaty rights, trust resources, and natural/cultural resources, and preventing the extinction of salmonids and pacific lamprey. The tribe's general council

chairman stressed the importance of the tribe's treaty rights; the agency-tribe consultation process; the cultural significance of fish species and their importance in contributing to the tribe's quality of life; and the Corps' trust responsibilities toward the tribe. A copy of the tribe's consultation process and protocols was given to the Corps.

Tribal concerns gathered from the February 22 meeting include the following: a) effects to tribal treaty rights from agency decision-making and need for collaborative management to recover anadromous fish species; b) lack of agency-tribe consultation in past for several salmonid recovery planning efforts to restore aquatic habitats; c) cost of breaching lower Snake River dams; d) need for long term management planning for cultural resources, and environmental rehabilitation plan for a drawdown alternative; e) lessons learned from other dam removal cases; f) how are effects to Pacific lamprey being addressed; and g) need to address the carrying capacity of the Snake River System and human uses. The Corps presented information concerning the Feasibility Study, economic reports, and the John Day Dam drawdown study. A copy of the Northwestern Division Native American Policy was given to the tribe.

On July 16, 1998 representatives from the Walla Walla District of the Corps presented information on the nature and status of the Feasibility Study to the Shoshone-Bannock Tribal Council on the Fort Hall Reservation. Both the economic and tribal circumstances report updates were provided. Tribal representatives expressed the point that the Federal understanding of cultural resources did not include both natural and cultural resources, which the tribe wanted to be viewed together in light of their interests and rights. Other topics discussed included the upper Snake River flow augmentation and its possible effects on the lower Snake River, and concerns for anadromous fish populations.

Consultation and coordination efforts with affected tribes also include the following:

- Tribal Reviews of DEIS Appendices - In May of 1999, copies of the Cultural Resources Appendix were distributed to the five participating tribes and one band of the Walla Walla District's Payos Kuus Ts'uukwe tribal co-operating group for review. No tribal review comments have been submitted to the Corps as of September 30, 1999.
- The Tribal Circumstances and Impacts of the Lower Snake River Project on the Nez Perce, Yakama, Umatilla, Warm Springs and Shoshone Bannock Tribes has been reviewed by the Columbia River Inter-Tribal Fish Commission and the five study tribes discussed in the report. In addition, copies of the report were distributed in mid-September 1999 to the full 14 tribes that may be affected by decisions in the FR/EIS.
- Future Consultation - The Corps is seeking input from tribes on how they want the Corps to fulfill consultation requirements under the Feasibility Study. The Corps plans on either additional consultation meetings with affected tribes or consultation meetings with individual tribes.

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President. Executive Order 13084. "Consultation and Coordination with Indian Tribal Governments." May 14, 1998.

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9. Glossary

Ceded lands: Land formally granted, as through a treaty agreement, from one government (an American Indian tribe) to another government (the United States Government). In the case of ceded lands within the lower Snake River basin, responsible tribes transferred all right and title in lands held by their peoples to the United States through treaties.

Culture Area: A term in Anthropology used to identify a group of distinct cultures that share common cultural traits, usually such cultures share a geographical region defined by the extent of their territories.

Executive Order: The term refers to orders of the Chief Executive. Executive orders have historically included the setting aside of land within the boundaries of the United States from general settlement, or to establish a particular land use through public laws, e.g., the Confederated Tribes of the Colville Reservation were Federally recognized and their reservation established through executive orders.

Tribe: An American Indian tribe, band, nation, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a.

Treaty: An agreement or contract between two or more nations or sovereigns, formally signed by commissioners properly authorized, and solemnly ratified by the participating sovereigns or the supreme power of each state. A treaty is not only a law, but a contract between two nations and must, if possible, have all its parts given full force and effect (Black's Law Dictionary 1968).